

written company policy or a collective bargaining agreement). This part takes no position on who ultimately pays the cost of the test, so long as the employer ensures that the testing is conducted as required and the results released appropriately.

§ 40.175 What steps does the first laboratory take with a split specimen?

(a) As the laboratory at which the primary and split specimen first arrive, you must check to see whether the split specimen is available for testing.

(b) If the split specimen is unavailable or appears insufficient, you must then do the following:

(1) Continue the testing process for the primary specimen as you would normally. Report the results for the primary specimen without providing the MRO information regarding the unavailable split specimen.

(2) Upon receiving a letter from the MRO instructing you to forward the split specimen to another laboratory for testing, report to the MRO that the split specimen is unavailable for testing. Provide as much information as you can about the cause of the unavailability.

(c) As the laboratory that tested the primary specimen, you are not authorized to open the split specimen under any circumstances (except when the split specimen is redesignated as provided in § 40.83).

(d) When you receive written notice from the MRO instructing you to send the split specimen to another HHS-certified laboratory, you must forward the following items to the second laboratory:

(1) The split specimen in its original specimen bottle, with the seal intact;

(2) A copy of the MRO's written request; and

(3) A copy of Copy 1 of the CCF, which identifies the drug(s)/metabolite(s) or the validity criteria to be tested for.

(e) You must not send to the second laboratory any information about the identity of the employee. Inadvertent disclosure does not, however, cause a fatal flaw.

(f) This subpart does not prescribe who gets to decide which HHS-certified laboratory is used to test the split

specimen. That decision is left to the parties involved.

§ 40.177 What does the second laboratory do with the split specimen when it is tested to reconfirm the presence of a drug or drug metabolite?

(a) As the laboratory testing the split specimen, you must test the split specimen for the drug(s)/drug metabolite(s) detected in the primary specimen.

(b) You must conduct this test without regard to the cutoff concentrations of § 40.87.

(c) If the test fails to reconfirm the presence of the drug(s)/drug metabolite(s) that were reported positive in the primary specimen, you must conduct validity tests in an attempt to determine the reason for being unable to reconfirm the presence of the drug(s)/metabolite(s). You should conduct the same validity tests as you would conduct on a primary specimen set forth in § 40.91.

(d) In addition, if the test fails to reconfirm the presence of the drug(s)/drug metabolite(s) reported in the primary specimen, you may send the specimen or an aliquot of it for testing at another HHS-certified laboratory that has the capability to conduct another reconfirmation test.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008]

§ 40.179 What does the second laboratory do with the split specimen when it is tested to reconfirm an adulterated test result?

(a) As the laboratory testing the split specimen, you must test the split specimen for the adulterant detected in the primary specimen, using the confirmatory test for the adulterant and using criteria in § 40.95 and confirmatory cutoff levels required by the HHS Mandatory Guidelines.

(b) In addition, if the test fails to reconfirm the adulterant result reported in the primary specimen, you may send the specimen or an aliquot of it for testing at another HHS-certified laboratory that has the capability to conduct another reconfirmation test.

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